

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
VIRGINIA ALCOHOLIC BEVERAGE CONTROL COMMISSION
RICHMOND

October 13, 1988

CIRCULAR LETTER
89-4

TO: ALL RETAIL AND CLUB LICENSEES

SUBJECT: ELECTRONIC VIDEOS POKER GAMES – GAMBLING DEVICES

PURPOSE: The purpose of this Circular Letter is to advise those concerned of recent rulings by the Board, and by certain state and federal courts within the Commonwealth, which have adjudged particular electronic video poker machines and similar electronic machines to be gambling devices, per se.

BACKGROUND: Section §4-37 A (1) (n) of the Alcoholic Beverage Control Act prohibits a licensee from possessing any illegal gambling apparatus, machine or device upon the licensed premises. Also § 4-37 A(1)(g) prohibits any form of illegal gambling to take place upon the licensed premises. Virginia Code §18.2-325, a part of our gambling laws, defines illegal gambling and states that a gambling device includes any machine or apparatus actually used in an illegal gambling operation or activity, as well as any machine or apparatus, including, but not limited to those dependent upon the insertion of a coin or other object for their operation, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled.

While the alcoholic beverage control laws of Virginia do not define illegal gambling or what constitutes a gambling device, the Board has adopted the definitions set forth in Virginia Code § 18.2-325. The three elements of illegal gambling in Virginia are prize, chance and consideration. First, even though a video poker or similar machine may require some degree of skill or knowledge of the particular game, if a winning hand or play is determined by luck or random selection, then the element of chance is present. Second, insertion of a coin, purchased token or other initial payment (direct or indirect) will constitute consideration. Third, even though the machine does not eject a prize or contain a mechanism to eject a prize, the element of prize will be legally established if the machine awards credits or points and has some or all of the characteristics unique to gambling devices. These characteristics include the following:

1. Knock-off switches
2. D.I.P. switches
3. Mechanical or electronic meters or devices, whether internal or external which record credits "knocked off" or otherwise record data to determine credits "knocked-off"
4. Short playing time
5. Electronic accounting display
6. Predetermined retention ratio or variable payoff
7. Credits or points that can be accumulated, bet on future games or used to increase payoff ratios
8. Multiple—coin wagering capabilities

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Only a few of the above characteristics, in any combination, are necessary to make the machine a gambling device, per se. In such case, it will not matter whether any person is observed to be operating the machine or making a payoff based on accumulated credits. Nor will it matter that the machine exhibits a "for amusement only" sign or notice. A number of recent Virginia Circuit Court decisions have clearly held that video poker machines possessing combinations of the characteristics listed above are gambling devices, per se. The presence of such characteristics constitutes proof the machines have been designed primarily for use in connection with illegal gambling. The mere possession of such a machine on the licensed premises is illegal.

Further, earlier this year (1989), as a result of enforcement and seizure action by the Board, the possession in Virginia of a large number of various types of video poker machines, with different combinations of the above-listed characteristics, was determined by the United States District Court for the Eastern District of Virginia to be illegal and in violation of federal law, specifically, the Gambling Devices Act of 1962. In addition, under federal law it is illegal to transport such machines into Virginia, and the devices are subject to confiscation and forfeiture under both Virginia and federal law.

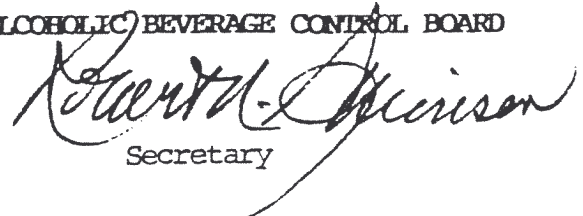
Finally, clubs or charitable organizations do not enjoy any exemption for unlawful video poker machines.

HELD: After October 31, 1989, any licensee who possesses or uses on his premises an electronic video poker machine, or similar device, with any number or combination of the aforementioned characteristics, not only may be in violation of the Virginia Alcoholic Beverage Control Act, but also of the gambling statutes of this state and of the federal Gambling Devices Act of 1962. When such a device is found upon licensed premises, appropriate disciplinary and other law enforcement action will be taken. In addition, criminal prosecution may be initiated, and the machines will be subject to confiscation and forfeiture under both federal and Virginia law.

Any licensee who has a question whether or not a particular device currently located on the licensed premises falls within the parameters of the devices prohibited herein, should contact the Special Agent of the Board in his respective area for the purposes of arranging an on-site inspection. If the inspection discloses the device falls within the prohibited group, any use immediately cease and a reasonable period of time not to exceed 30 days will be allowed to remove the device from the licensed premises. Failure to do so within that time period will result, at minimum, in a citation against the ABC license and the matter will be presented to the local Commonwealth's Attorney for consideration of appropriate action.

INQUIRES: Inquiries concerning the above should be addressed to Robert N. Swinson, Secretary's Office, P.O. Box 27491, Richmond, Virginia 23261 (804) -367-0616.

ALCOHOLIC BEVERAGE CONTROL BOARD


Secretary